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Attorneys for Mark Atkinson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	
	:	
WONDERWORK, INC.,	:	
-----	:	Chapter 11
VINCENT A. SAMA, as Litigation Trustee	:	
of the WW LITIGATION TRUST,	:	Case No. 16-13607 (SMB)
	:	
Plaintiff,	:	Adv. No. 18-1873 (SMB)
	:	
-against-	:	
	:	
BRIAN MULLANEY, HANA FUCHS,	:	
THEODORE DYSART, RAVI KANT,	:	
JOHN J. CONEYS, STEVEN LEVITT,	:	
CLARK KOKICH, STEVEN RAPPAPORT,	:	
RICHARD PRICE, and MARK ATKINSON	:	
	:	
Defendants.	:	
-----	X	

MOTION OF DEFENDANT MARK ATKINSON TO DISMISS THE SECOND AND
THIRD CLAIMS OF THE COMPLAINT OR IN THE
ALTERNATIVE FOR A MORE DEFINITE STATEMENT

Defendant Mark Atkinson, pursuant to Rules 8, 12(b)(6) and 12(e) of the Federal Rules of Civil Procedure, as made applicable to this adversary proceeding by Rules 7009 and 7012 of the Federal Rules of Bankruptcy Procedure, hereby moves this Court, before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge for the Southern District of New York, One Bowling Green, Courtroom 723, on May 23, 2019 at 10:00 a.m., or as soon thereafter as counsel may be heard, for an order dismissing the Adversary Complaint, or in the alternative, requiring the Trustee to provide a more definite statement, and granting such other and further relief as the Court deems just and proper.

Mr. Atkinson hereby joins in the motion of Defendants Steven Levitt, Clark Kokich,

Steven Rappaport and Richard Price (“Levitt Defendants”), who have together moved to dismiss the complaint, or in the alternative for a more definite statement (“Levitt Motion”).

Mr. Atkinson is alleged in the complaint to have served a director of Debtor Wonderwork Inc. (“Wonderwork”) from December 2015 until November 2017, the same time period as the Levitt Defendants are alleged to have served. The complaint in this action does not make allegations against Mr. Atkinson that are distinct from the allegations against the Levitt Defendants. Other than Paragraph 17, which identifies Mr. Atkinson as a party, the complaint makes the following allegations against Mr. Atkinson:

- Paragraph 25, which states that “Kokich, Levitt, Price, Rappaport, and Atkinson” made a statement concerning likewise described the WonderWork Board as “dedicated, hands-on, and active in its supervision of Brian and the organization’s management generally” and affirmed, under penalty of perjury, that “the Board has no potential, planned or pending claims against” Mullaney and that Mullaney had the Board’s “utmost confidence.”
- Paragraph 52 which states that “[i]n December 2015, Steven Levitt, Clark Kokich, Steven Rappaport, Richard Price, Mark Atkinson, and Richard Steele joined the Board.”
- Paragraph 54 which states “following the Petition Date, the Board Members were Mullaney, Coneys, Kokich, Levitt, Rappaport, Price and Atkinson.”

The only other mentions of Mr. Atkinson are in Paragraphs 130-133, where the complaint recites the elements of the Second Claim of Relief against the Levitt Defendants, Mr. Atkinson, and other director defendants, and Paragraphs 135-138, where the complaint recites the elements of the Third Claim of Relief against these same defendants.

Given that there are no factual allegations against Mr. Atkinson that are also not made against the Levitt Defendants, the contentions made in the Levitt Motion, that the complaint is insufficient pursuant to FRCP 8 and 12(b)(6), or that, alternatively a more definite statement is required, fully apply to Mr. Atkinson. Given that it would be waste of judicial resources for the Court to have to review and decide a separate motion by Mr. Atkinson in addition to the comprehensive and well-reasoned motion of the Levitt Defendants, Mr. Atkinson hereby joins in the Levitt Motion and incorporates each and every argument herein.

Dated: New York, New York
April 2, 2019

Respectfully submitted,

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/s

By:

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